

Message Text

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PAGE 01 STATE 172004

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ORIGIN EB-07

INFO OCT-01 EA-09 ISO-00 TRSE-00 ITC-01 /018 R

DRAFTED BY EB/OT/STA:WTDIROLL:KAM

APPROVED BY EB/OT/STA:WCLARK, JR.

CUSTOMS:RSEELY

EA/PHL:JSARTORIUS

ITC:JREEDER

GCP:SAHMAD

----- 114680

R 122112Z JUL 76

FM SECSTATE WASHDC

TO AMEMBASSY MANILA

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E.O. 11652: N/A

TAGS: ETRD, RP

SUBJECT: PETITION FOR INCREASED DUTY ON COCONUT OIL -- GOP
INQUIRY

REF: MANILA 9164

1. IN MAKING HIS INQUIRY, THE DEPARTMENT OF TRADE OFFICIAL APPARENTLY HAS IN MIND AN ADMINISTRATIVE PROCEEDING NOW BEING CONDUCTED BY THE CUSTOMS SERVICE OF THE DEPARTMENT OF THE TREASURY UNDER THE PROVISIONS OF SECTION 516 OF THE TARIFF ACT OF 1930. THE PROCEEDING WAS INSTITUTED LAST MARCH AT THE REQUEST OF GLIDDEN-DURKEE AN AMERICAN PROCESSOR OF VEGETABLE OILS. GLIDDEN-DURKEE HAS PETITIONED THE SERVICE FOR A RECLASSIFICATION OF QUOTE TOP AND MID FRACTIONS OF VEGETABLE OILS OBTAINED BY FRACTIONATION END QUOTE FOR CUSTOMS PURPOSES. AS NOTED BY THE EMBASSY, THE SERVICE ANNOUNCED THE RECEIPT OF THE PETITION IN A PUBLIC NOTICE IN THE FEDERAL REGISTER LAST MARCH AND, IN SO DOING, INVITED THE VIEWS OF INTERESTED PARTIES ON THE PETITION. THE SERVICE IS CURRENTLY DIGESTING AND EVALUATING SUBMISSIONS,
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PAGE 02 STATE 172004

INCLUDING ONE FROM THE PHILIPPINE EMBASSY.

2. IN BRIEF, SECTION 516 PROVIDES THAT ANY AMERICAN MANUFACTURER WHO BELIEVES THAT IMPORTED MERCHANDISE OF A CLASS OR KIND THAT HE PRODUCES IS (1) BEING APPRAISED AT TOO LOW A VALUE OR (2) NOT BEING CORRECTLY CLASSIFIED UNDER THE NOMENCLATURE OF THE TARIFF SCHEDULES OF THE UNITED STATES, OR (3) NOT BEING ASSESSED AT THE PROPER RATE OF DUTY, MAY PETITION THE SECRETARY OF THE TREASURY. THE PETITIONER MUST INDICATE THE APPRAISED VALUE, OR CLASSIFICATION, OR RATE OF DUTY BELIEVED PROPER AND THE REASONS FOR HIS BELIEF THAT THE EXISTING CUSTOMS PRACTICE IS NOT CORRECT. IF, AFTER CONSIDERATION OF THE PETITION, THE SECRETARY OF THE TREASURY DECIDES THAT EXISTING PRACTICE IS NOT CORRECT, HE DETERMINES THE PROPER APPRAISED VALUE, OR CLASSIFICATION OR RATE OF DUTY, AND NOTIFIES THE PETITIONER OF HIS DETERMINATION. THEN, MORE THAN THIRTY DAYS AFTER THE DATE SUCH NOTIFICATION IS PUBLISHED IN THE WEEKLY CUSTOMS BULLETIN THE AFFECTED IMPORTED MERCHANDISE MUST BE APPRAISED, OR CLASSIFIED, OR ASSESSED AS TO RATE OF DUTY IN ACCORDANCE WITH THE SECRETARY'S DETERMINATION. IF THE SECRETARY DECIDES EXISTING PRACTICE IS CORRECT, HE INFORMS THE PETITIONER WHO, IF HE DESIRES, MAY APPEAL THE DECISION IN THE CUSTOMS COURT.

3. UNDER CURRENT CUSTOMS PRACTICE, ALL EXPRESSED OR EXTRACTED VEGETABLE OILS, WHETHER CRUDE OR SUBJECTED TO REFINING PROSESSES, BUT NOT ANY SUCH PRODUCTS WHICH HAVE BEEN ARTIFICIALLY MIXED OR WHICH HAVE BEEN SULFONATED, SULFATED, HYDROGENATED OR PROCESSED OTHERWISE THAN BY REFINING, ARE CLASSIFIED UNDER THE APPROPRIATE ITEM OF NOMENCLATURE PROVIDED IN SCHEDULE ONE, PART 14, SUBPART B -- VEGETABLE OILS, CRUDE OR REFINED -- OF THE TARIFF SCHEDULES OF THE UNITED STATES. COCONUT OIL, ONE OF THE THREE VEGETABLE OILS CITED BY THE EMBASSY, IS CLASSIFIED UNDER ITEM 176.04 AND DUTIABLE AT ONE CENT PER POUND; PALM OIL, UNDER ITEM 176.34 AND FREE OF DUTY, AND EDIBLE PALM KERNEL OIL, WHICH IS CITED AND DISCUSSED IN THE GLIDDEN-DURKEE PETITION, UNDER ITEM 176.33 AND DUTIABLE AT ONE HALF CENT PER POUND, OR AS NOTED BY THE EMBASSY, FREE OF DUTY IF ENTERED FROM ANY BENEFICIARY DEVELOPING COUNTRY UNCLASSIFIED

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PAGE 03 STATE 172004

UNDER GSP. IF SUCH OILS ARE HYDROGENATED IMPORTS ARE CLASSIFIED UNDER ITEM 178.10 IN SUBPART D -- HARDENED OILS, FATS AND GREASES; MIXTURES -- AND DUTIABLE AT 5 CENTS PER POUND.

4. WE UNDERSTAND THAT FRACTIONATION IN THE CASE OF THE VEGETABLE OILS OF INTEREST MEANS THE SEPARATION OF SUCH OILS INTO LIQUID, SEMISOLID OR SOLID COMPONENTS IN THE

EXTRACTION AND REFINING PROCESS, THAT IN FRACTIONATION THERE IS NO ALTERATION OF THE CHEMICAL COMPOSITION OF SUCH COMPONENTS, AND THAT COCONUT, PALM AND PALM KERNEL OILS SEPARATE INTO LIQUID, SEMISOLID, AND SOLID FRACTIONS IN THE PROCESS OF EXTRACTION AND REFINING WITHOUT ANY CHANGE IN THE CHEMICAL COMPOSITION OF THE COMPONENTS. FURTHER, THAT THE PETITIONER CLAIMS THAT SEMISOLID AND SOLID COMPONENTS (IN THE PETITIONER'S WORDS QUOTE ALL HARD TOP AND MID FRACTIONS END QUOTE) SHOULD BE CLASSIFIED AS HARDENED OILS UNDER ITEM 178.10 OF SUBPART D, PART 14 OR AS OTHER EDIBLE PREPARATIONS UNDER ITEM 182.98 OF SUBPART B OF PART 15 RATHER THAN UNDER SUBPART B OF PART 14. IMPORTS ENTERING UNDER ITEM 182.98 ARE DUTIABLE AT 10 PERCENT AD VALOREM. THE PETITION INVOLVES THE CUSTOMS SERVICE PRACTICE WITH RESPECT TO ALL FRACTIONATED VEGETABLE OILS CLASSIFIED UNDER SUBPART B.

5. IN BRIEF, WE UNDERSTAND THAT THE ESSENCE OF THE PRESENT CUSTOMS SERVICE PRACTICE IS TO CLASSIFY LIQUID, SEMISOLID, OR SOLID VEGETABLE OILS WHICH HAVE BEEN DERIVED FROM EXTRACTION AND REFINING AND WHICH HAVE NOT BEEN ALTERED BY ANY CHEMICAL PROCESS AS CRUDE OR REFINED OILS UNDER THE APPROPRIATE PROVISION OF SUBPART B. IF, HOWEVER, THE COMPOSITION OF SUCH OILS HAS BEEN ALTERED BY SOME CHEMICAL PROCESS, SUCH AS HYDROGENATION, SULFONATION, OR SULFATION, THE PRACTICE IS TO CLASSIFY SUCH ALTERED OILS IN SUBPART D WHEN HYDROGENATED OR IN SCHEDULE FOUR AS CHEMICALS OR RELATED PRODUCTS WHEN SULFONATED OR SULFATED. THE WORD HARDENED IS CONSIDERED TO BE SYNONYMOUS WITH THE WORD HYDROGENATION IN THE NOMENCLATURE OF ITEM 178.10. THE PETITIONER CONTENDS, IN PRINCIPAL EFFECT, THAT THE CLASSIFICATION OF ANY OF THE OILS OF INTEREST UNDER ITEM 178.10 SHOULD NOT BE CONTINGENT UPON AN ALTERATION OF THEIR UNCLASSIFIED

UNCLASSIFIED

PAGE 04 STATE 172004

COMPOSITION BY A CHEMICAL PROCESS; I.E., HYDROGENATION.

6. THE PROCEEDING IS NOT RELATED TO ANY QUESTION OF TARIFF POLICY.

7. WE WILL KEEP THE MISSION INFORMED OF SIGNIFICANT DEVELOPMENTS. KISSINGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: CUSTOMS DUTIES, POLICIES, COCONUTS
Control Number: n/a
Copy: SINGLE
Draft Date: 12 JUL 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976STATE172004
Document Source: CORE
Document Unique ID: 00
Drafter: WTDIROLL:KAM
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760268-0994
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760767/aaaacguo.tel
Line Count: 161
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN EB
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 76 MANILA 9164
Review Action: RELEASED, APPROVED
Review Authority: schaeafj
Review Comment: n/a
Review Content Flags:
Review Date: 26 FEB 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <26 FEB 2004 by ThomasVJ>; APPROVED <13 SEP 2004 by schaeafj>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: PETITION FOR INCREASED DUTY ON COCONUT OIL -- GOP INQUIRY
TAGS: ETRD, EPAP, RP
To: MANILA
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006